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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 8 1992

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Bob Dupree
SHWIM

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SOEA

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Annexation
SOEA

Jam Vane 9/18/92
SHWIM-SR

Honorable Wayne Owens
House of Representatives
Washington, D.C. 20515

Dear Mr. Owens:

A: PLS copy:
Done 9-22 att
Greg Oberly, SHWIM-SR
Rick Buird, EORC
Mike Zimmerman, SEAB

Thank you for your letter of August 4, 1992, regarding our September 15 meeting. We look forward to meeting with you to discuss the Environmental Protection Agency's (EPA's) positions on the Richardson Flat Tailings and the Sharon Steel/Midvale Tailings sites.

I would like to address your question concerning the applicability of the Administrative Procedure Act (APA) to Richardson Flat Tailings discussions. EPA is concerned about the applicability of the APA's ex parte provisions to this situation. Of course, it is essential that our meeting be held in a manner that fully complies with the APA. After discussions with our Office of General Counsel, I can offer the following views on the subject.

First, as your August 4 letter notes, the APA does not forbid contacts between the Agency and interested parties during the course of a rulemaking. Indeed, Agency policy (as reflected in the enclosed memorandum from Administrator Reilly) is to reach as broadly as possible for views to assist the Agency in arriving at final rules. Therefore, we certainly want to hear what you may have to say regarding the listing. As the enclosed policy notes, however, it is also important that final decisions reflect the information considered by the Agency; therefore, we will summarize in writing any information we receive in a discussion of this nature and include that record, along with any materials provided to EPA, in the rulemaking docket. We strongly encourage you to prepare in writing any significant comments you may have. This will assist us in summarizing your concerns accurately.

Additional issues may arise if EPA staff privately share with you their current thinking on the issues in the rulemaking. While again the APA does not prohibit disclosing the staff's preliminary views, the selective disclosure of such views may create an appearance of arbitrariness or inequity, particularly



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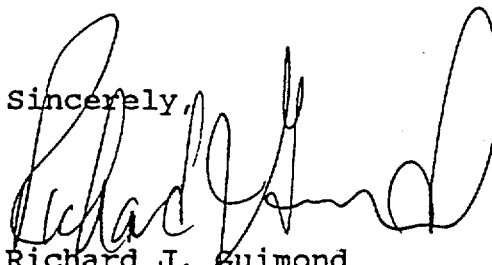
if Potentially Responsible Parties were to be present at the meeting. Under some circumstances, this may create concerns about the adequacy of notice and opportunity for comment.

EPA considers it important to maintain a reasonable degree of confidentiality in its deliberation on a rule and to ensure that Agency staff feel free to express their views without concern about embarrassment if those views are not accepted in the final Agency decision. If such views are expressed in a meeting with an outside party, they would have to be disclosed publicly, and EPA does not want to put its staff members in such a potentially difficult position. In addition, the informal remarks of specific Agency staff members might be mistakenly interpreted as Agency views. We are therefore reluctant to disclose such staff views.

Because of these varied concerns, our general practice is to be somewhat guarded in discussing the staff's current thinking on issues that have been raised in a rulemaking. At the same time, we appreciate your desire to have a full airing of the issues. We will, therefore, attempt to be as responsive as possible to concerns you raise at the meeting, subject to the other considerations discussed above. For example, EPA staff may be able to comment on the strengths and weaknesses of issues you raise in your meeting.

I hope that this adequately answers your questions over a very difficult issue. Please note that to mitigate any concerns over a possible appearance of selective sharing of "inside" information, it may be appropriate to invite the State of Utah into our discussions. We should agree on how to involve the State before we meet. If you require further information, please have your staff contact Henry Longest of my staff at (202) 260-2180.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard J. Guimond', written over a horizontal line.

Richard J. Guimond
Assistant Surgeon General, USPHS
Deputy Assistant Administrator

Enclosure